

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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JUN 11 1975

FILE: B-115398

DATE:

MATTER OF: Payment to States of 50 percent of food stamp  
program administrative costs

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**DIGEST:** Neither "delay" by Department of Agriculture (DA) in promulgating regulations to implement § 2 of Pub. L. No. 93-347, which authorized payment to States of 50 percent of all food stamp program administrative costs, nor DA's failure to eventually provide for such payments prior to October 1, 1974, constitutes "deferral of budget authority" within application of Impoundment Control Act, Pub. L. No. 93-344, title X, since DA's approach to implementation of 50 percent payments does not involve formal reserve or withholding of budget authority, and October 1 implementation date has been ratified by the Congress.

This decision is in response to numerous inquiries which we have received concerning whether the approach employed by the Department of Agriculture (DA) to the implementation of a statute providing for payment to State agencies of 50 percent of their total administrative costs under the food stamp program constitutes a "deferral of budget authority" within the meaning of the Impoundment Control Act of 1974, approved July 12, 1974, Pub. L. No. 93-344, title X, 88 Stat. 332.

Among other things, the Impoundment Control Act requires that the President transmit to the Congress special messages concerning "deferrals of budget authority," and subjects such deferrals to specified congressional review and disapproval procedures. Section 1015(a) of the Act provides in substance that, when the President fails to transmit a special message in circumstances which constitute a de facto deferral of budget authority, the Comptroller General shall report such deferral to the Congress, and the Comptroller General's report shall have the same effect as a Presidential special message in terms of triggering congressional review and disapproval procedures. See our letter to the Speaker of the House of Representatives and the President pro tempore of the Senate dated December 4, 1974, B-115398, H. Doc. No. 93-404 (1974), for a general discussion of the Impoundment Control Act.

It is the position of the executive branch, through DA, that the instant matter does not involve a "deferral of budget authority" within the application of the Impoundment Control Act, and the President has

not transmitted a special message thereon to the Congress. For the reasons stated hereinafter, we agree with this position. Accordingly, there is no basis for the exercise of our authority under section 1015(a) of the Act.

This matter relates to DA's approach to implementation of section 2 of the Act approved July 12, 1974, Pub. L. No. 93-347, 88 Stat. 341, which further amended sections 15(a) and (b) of the Food Stamp Act, as amended, 7 U.S.C. § 2024, to read as follows:

"(a) Except as otherwise provided in this section, each State shall be responsible for financing, from funds available to the State or political subdivision thereof, the costs of carrying out the administrative responsibilities assigned to it under the provisions of this Act.

"(b) The Secretary [of Agriculture] is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs, including but not limited to, the cost of (1) the certification of households; (2) the acceptance, storage, and protection of coupons after their delivery to receiving points within the States; (3) the issuance of such coupons to eligible households; (4) the outreach and fair hearing requirements of section 10 of this Act; and (5) the control and accounting of coupons: Provided, That each State shall, from time to time at the request of the Secretary, report to the Secretary on the effectiveness of its administration of the program and no such payment shall be made to any State unless the Secretary is satisfied pursuant to regulations which he shall issue that an adequate number of qualified personnel are employed by the State in the program to administer the program efficiently and effectively."

Prior to enactment of Pub. L. No. 93-347, DA was authorized to reimburse the States for 62.5 percent of only specified administrative costs. As noted, Pub. L. No. 93-347 expanded such payments to 50 percent of all administrative costs incurred by the States in carrying out the food stamp program.

The inquiries to our Office were prompted by a notice appearing at 39 Fed. Reg. 32927 (September 12, 1974), wherein DA announced that it intended to publish proposed regulations to implement section 2 of Pub. L. No. 93-347 and that:

"\* \* \* Because of the period of time involved in finalizing these regulatory changes and reaching all necessary agreements, the effective date for claiming the 50 percent Federal matching of costs authorized by Public Law 93-347 will be the date on which the final regulations are published in the FEDERAL REGISTER."

Several States objected to the DA notice on the basis that the 50 percent payments should have been scheduled to accrue as of July 1, 1974. DA has subsequently modified its initial position by publishing regulations, 39 Fed. Reg. 43692 et seq. (December 17, 1974), which provide, inter alia, that 50 percent payments will accrue as of October 1, 1974.

At the time of the inquiries to our Office, subsequent to DA's September 12 notice but prior to publication of its December 17 regulations, it was suggested, in part, that DA's allegedly excessive delay in implementing Pub. L. No. 93-347 as such constituted a deferral of budget authority for purposes of the Impoundment Control Act. This point might now be considered moot. However, as noted previously, the principal assertion of these inquiries was that Pub. L. No. 93-347 contemplated the accrual of entitlement to 50 percent payments as of July 1, 1974, and, therefore, that DA's failure to authorize such payments as of that date is the factor resulting in a deferral of budget authority.

Section 1011(1) of the Impoundment Control Act defines a "deferral of budget authority" for purposes of the Act as including--

"(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

"(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law \* \* \*."

It appears that paragraph (A) of the foregoing definition is generally meant to describe formal executive branch actions arising in the ordinary course of implementing budget authority, such as the establishment of reserves through the apportionment process pursuant to subsection (c) (2) of R.S. § 3679 (the so-called "Antideficiency Act").

31 U.S.C. § 665, as amended by § 1002 of the Impoundment Control Act. Another example of such formal action would be the withholding of budget authority through the process of intra-agency allotments of funds under subsection (g) of the Antideficiency Act. We are satisfied that no such formal deferral action within the meaning of section 1011(1)(A) of the Impoundment Control Act is involved in the instant case. Responding to our specific inquiries in this regard, Assistant Secretary of Agriculture Richard L. Feltner advised us by letter dated November 20, 1974:

"The Department of Agriculture has not, under any provisions of law, reserved, withheld, or otherwise deferred any existing budget authority in connection with the 50-50 matching payments to be made to the States under the 1974 amendments to the Food Stamp Act. Neither this Department nor the Office of Management and Budget plans to undertake or propose any reservation, withholding or deferment of such payments upon enactment of appropriations for the Department of Agriculture for fiscal year 1975, nor is there any present intention to do so in the future."

Apart from formal spending and obligation limitations, section 1011(1)(B) of the Impoundment Control Act, supra, also includes within the definition of deferral of budget authority "any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority \* \* \*." This definition "is intentionally written in broad terms so as to ensure that no executive action of any kind which holds up the expenditure of funds that the Congress intended to be expended will go unreported." H. Rep. No. 93-658, 42 (1973); cf., S. Rep. No. 93-121 (on S. 373, 93d Cong.), 20-21 (1973). Accordingly, the applicability of the Impoundment Control Act to the instant matter turns upon whether or not the "delay" in funding 50 percent payments under section 2 of Pub. L. No. 93-347 appears to be inconsistent with congressional intent.

The inquiries to our Office construe Pub. L. No. 93-347 as contemplating that State entitlements to 50 percent payments would accrue as of July 1, 1974. We are unable to accept this construction. Initially, it must be noted that to hold that entitlements should accrue as of July 1 would give section 2 of Pub. L. No. 93-347 a retroactive effect since the law was not enacted until July 12, 1974. A statute is ordinarily deemed to take effect upon the date it becomes law and to apply prospectively thereafter. See, e.g., 2 Sutherland Statutory Construction §§ 33.06, 41.04 (1973). Nothing in Pub. L. No. 93-347 provides that section 2 has any effect prior to July 12.

The absence of any such provision as to section 2 seems particularly notable in view of the fact that other sections of the statute do apply by their terms on a fiscal year basis. Compare B-181234, June 20, 1974. Therefore, it appears that the earliest possible effective date for accrual of 50 percent payments would be July 12, 1974.

With respect to the possibility of providing for the accrual of 50 percent payments as of July 12, Assistant Secretary Feltner's letter to us, supra, states in part:

"There is no legal bar to the issuance of regulations which would permit qualifying State agencies to receive 50 percent reimbursement for costs accruing on and after July 12, 1974. However, there are practical administrative considerations which make it inadvisable to adopt such a procedure. In view of the fact that State agencies and the Department of Agriculture have been operating on a quarterly basis with respect to claims for cost sharing under the pre-existing provisions of section 15 of the Food Stamp Act, as amended, and since quarterly accounting procedures will be continued under the new legislation, the Department expects to announce that payment of the new cost sharing basis will be made to State agencies from and after October 1, 1974, the beginning of the first full quarter after enactment of the legislation.

"This Department does not view its proposal to honor 50-50 matching claims only from and after October 1, 1974, as action subject to the provisions of the Impoundment Control Act of 1974. That Act does not purport to invalidate the exercise of reasonable administrative discretion in the adoption of program provisions and regulations following enactment of new legislation. In this case, no deferral of budget authority is intended, and it is expected that the claims of qualifying State agencies will be honored from and after the beginning of the first full quarter following enactment of the legislation in July 1974. Moreover, it would seem inappropriate to apply the provisions of the Impoundment Control Act of 1974 to the current situation which prevails with respect to this Department's appropriations for fiscal year 1975. No appropriation act has yet been approved for this Department for the current fiscal year. At the present time, expenditures are being made under the authority of a continuing resolution. Until such time as an appropriation act covering the activities of this Department for fiscal year 1975 has been adopted, it seems questionable whether there could be any 'deferral of budget authority' within the meaning of the Impoundment Control Act of 1974."

Whatever the merits of the foregoing contentions might be as a general matter, the action of the Congress in passing final 1975 appropriation legislation for DA, subsequent to the Assistant Secretary's letter to us, has effectively resolved any doubt as to congressional intent concerning accrual of the 50 percent payments here involved.

The Agriculture-Environmental and Consumer Protection Appropriation Act, 1975, approved December 31, 1974, Pub. L. No. 93-563, 88 Stat. 1822, 1842, makes appropriations for the food stamp program available to implement the 50 percent payments to States. As reported by the Senate Committee on Appropriations and as passed by the Senate, the bill eventually enacted as Pub. L. No. 93-563 would also have required that such 50 percent payments be made effective from July 12, 1974. See S. Rep. No. 93-1296, 74 (1974); 120 Cong. Rec. S19999-20000 (daily ed., Nov. 25, 1974). However, the latter requirement was deleted in conference on the basis of DA's advice that payments would accrue as of October 1, 1974. See H. Rep. No. 93-1561, 5 (1974); 120 Cong. Rec. S21776 (daily ed., Dec. 17, 1974). In view of these circumstances, we must conclude that DA's decision to establish the October 1 date for implementation of 50 percent payments has been specifically ratified by the Congress.

SIGNED ELMER B. STAATS

Comptroller General  
of the United States